

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ANTOLIN ANDREW MARKS,

**Plaintiff,**

V.

JOHN DOE ALBIN *et al.*,

### Defendants.

Case No. C06-5675RBL

## REPORT AND RECOMMENDATION

**NOTED FOR:**  
**May 25, 2007**

This Bivens action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Plaintiff has been given leave to proceed *in forma pauperis* (Dkt. # 7).

In January of 2007, after review of the initial complaint, the court ordered plaintiff to amend (Dkt. # 8). An amended complaint was filed in February of 2007 (Dkt. # 9). Review of the amended complaint showed it to suffer from the same defects as the original. On March 13, 2007, plaintiff was again instructed to file an amended complaint (Dkt # 10).

Plaintiff has not complied with the court's order. Instead, he filed a motion to conduct discovery (Dkt. # 11). When his motion was denied, (Dkt. # 12), he filed a motion asking for an

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1 extension of time (Dkt. # 13). That motion has been denied. Plaintiff alleges he needs more time  
2 because of other current litigation, but he does not show he could not have filed his amended  
3 complaint in a timely fashion.

4 Plaintiff has been ordered to file an amended complaint and has not done so, despite being given  
5 over 90 days to comply with the court's order. The first order to amend was entered on January 25,  
6 2007, the second on March 13, 2007 (Dkt. # 8 and 10). The court recommends this action be  
7 dismissed prior to service for failure to comply with court orders. A proposed order accompanies  
8 this Report and Recommendation.

9 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure,  
10 the parties shall have ten (10) days from service of this Report to file written objections. *See also*  
11 Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of  
12 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule  
13 72(b), the clerk is directed to set the matter for consideration on **May 25, 2007**, as noted in the  
14 caption.

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16 DATED this 7 May, 2007.  
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/S/ J. Kelley Arnold

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J. Kelley Arnold

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United States Magistrate Judge

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